

Philip Traherne Sen' and
Philip Traherne Jun' } Appel-
lants.

Richard Sadleir, John Sad- } Respon-
leir and Simon Beckley, } dents.

The Appeal is to Reverse a Decree of Dismission made the 18th Day of May, 1705, in the Court of Chancery, whereby the Appellants Bill was Dismiss'd with Costs.

The Appellant's C A S E.

That on the First of July, 1703, a Warrant, on an Execution was delivered to the Appellant, Philip Traherne Jun' as Bayliff of the half Hundred of Clavering in Essex, at the Suit of Josias Ent, Esq; and Catherine his Wife, to Levy 1200 l. besides Costs, on the Goods of one Richard Baines, which Warrant was returnable in Michaelmas-Term following.

That by Virtue of this Warrant, Traherne Jun' seiz'd the Corn growing on the said Baines his Farm, called Berden-Priory, and some other Goods, which were Appraised at 566 l. 6 s. 10 d.

That the Respondent, Richard Sadleir, having a Mortgage from Baines of the said Farm, and also a Judgment in Ejectment, the said John Sadleir and Beckley, before the Corn was carry'd into the Barn, viz. the 20th of August, 1703, brought Traherne Jun' a Warrant on the Judgment in Ejectment from the Sheriff of Essex, to deliver the Possession of Baines his Farm to them, for the Use of the Respondent Richard Sadleir.

27 Aug. 1703. Ar-
ticles between the
Appellant Tra-
herne Jun' Sadler
and Beckley.
That Traherne Jun' intended to hire Barns off the Farm, to carry the Corn into. But John Sadleir and Beckley con- sidering that the Farm would suffer if the Straw were not spent thereon: Did, on the 27th of August, 1703, agree with Traherne Jun' That he should have the Use of the Barns for to lay in, and thrash the Corn, till Lady-day following; and for this, all the Straw (which was worth at least Thirty Pounds) was to be, and accordingly was spent on the Estate, and thereupon Possession was deliver'd according to the Warrant, and the Corn was all carry'd into the Barns.

That Traherne Jun' us'd all the Dispatch that was possible, to have the Corn soon thresh'd out, in order to pay the Execution-Money; but could not get half of it done by the Return of the Warrant, that being a very wet Summer, where- by the Corn ran much into Straw, and consequently three times more than usual in other Years, was taken up in threshing it.

Sadleir's Title to the
Farm.
That the said Farm was Leased by Christ's Hospital at 150 l. a Year, to one Bathurst, in the Year 1690, for Thirty one Years, which by Mean Assignments, came down to the said Baines, or to one Cason in Trust for him, which (as the Respondent, Richard Sadleir pretends) was assign'd to him on the 22d of July, 1701, for the securing 2100 l. with Interest.

That there being two Years Rent due to the Hospital, at Michaelmas, 1703, and Sadleir intending to free himself and the Farm from Paying it, he goes to the Hospital in December following, and acquaints them with the Seizure of Baines his Corn, and that a great deal of it was in the Barns, which they might Distrain for their Rent; which they would not do, (being unwilling to engage themselves in a Suit) till he gave 'em Security to save them Harmless, and afterwards he De- strain'd the Corn in the Hospital's Name.

That Traherne Jun' looking on the Distress to be a meer contrivance of Sadler's, and being in possession of the Corn, un- der the Execution, that could not then possibly be Thresh'd out, got a Warrant from the High Sheriff to oppose such Distress, and by Command of such Warrant, the Appellant Philip Traherne Sen' (being the other Appellants Father) assisted his Son in breaking open the Locks, which the Persons that Distrain'd had set on the Barn Doors, and afterwards went on in Thresh- ing the Corn.

That the Hospital not intending to trouble themselves any farther therein, and looking on Sadleir to be their Tenant (as he really was by virtue of his Mortgage from July, 1701, and the only Person from whom they expected their Rent) sent to him for their Rent, and he Paid 150 l. and then (upon giving them Security to save them Harmless) got leave of them to use their Names in an Action against the Appellants for Rescuing the Distress.

That accordingly Richard Sadleir carry'd on this Action at his own Charge, and at the Assizes for the County of Essex, the Appellants were found guilty to the value of 108 l. being the value of the Goods Distrain'd (the Appellants Defence being then admitted to be only Equitable.)

That the Appellants prefer'd their Bill in Chancery against the Hospital and the Respondents; praying that the said Re- spondent Richard Sadleir, might be Decreed to pay the said Hospital the Money recovered, or else Indemnify the Appel- lants from the same; whereto the Respondents, as also the Hospital, Answered, and admitted the Case much to the Effect as above set forth.

18 May, 1705.
Cause heard in
Chancery.
The Cause was heard on the 18th Day of May last, by the late Lord Keeper, and the Bill as to the Hospital, was dismiss'd with 40 Shillings Costs, and as to the other Respondents, it was dismiss'd with Costs to be Tax'd, which are since Tax'd to 63 l. and the Appellant Philip Traherne Jun' has suffer'd 240 l. and upwards, more by the said Execution, not being able to make above 339 l. 9 s. after Charges, besides his Trouble, and yet has been forc'd to Pay and Secure the whole 566 l. 6 s. 10. To the said Ent and his Wife.

From which Dismission, as to the Respondents (the Appellants not Complaining or Objecting against the Dismission as to the Hospital) the said Philip Traherne Sen' and Jun' Appeal'd to your Lordships as Erroneous, and humbly hope your Lordships will be pleas'd to Reverse the same for the Reasons following.

Reasons for Rever-
sing the Decree.

- 1st. For that the Two Years Rent due to the Hospital at Michaelmas, 1703, was properly and only due from Richard Sadleir, he being the Hospital's Tenant from July, 1701, neither Cason nor Baines (being only Assignees) could be sued for the same.
- 2dly, For that it is imply'd in the Agreement, for the Appellant Traherne Jun' having the Use of the Barns till Lady-day, 1704, and the Respondent Richard Sadleir's receiving a Benefit of the Straw thereby, that Traherne should not be mole- sted in that time by Sadleir himself, or by any Person by his Order, or thro' his Defect of not paying his Rent.
- 3dly, That the Distress and Action of Rescous (though formally the Hospital's Act) are in Substance, the Respondent's; Richard Sadleir's, and redound only to his Benefit, the Money recovered thereby, going towards lessening the Rent, which Sadleir was to have Paid, and the whole Proceedings of the said Richard Sadleir being a fraudulent breaking in on his own Agreement.

And on the Reversal of the said Decree, the Appellants humbly hope, your Lordships will be pleas'd to Decree the said Richard Sadleir, to pay unto the Hospital the said 108 l. and the Costs of Suit, or else to save the Ap- pellants harmless from the same, and also to pay unto the Appellants their Costs in Chancery.

Richard Turner.

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TRAHERNE, & al'

Contr'

SADLEIR, & al'

The Appellants' Case.

To be heard on Friday the

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John and Simon Beckley, Agents.

Richard S. Zuckert, John Zuckert/Reuben

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